

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA**

In the Matter of:	)	<b>R9-2001-04</b>
	)	
Mirant Potrero LLC	)	<b>Administrative Order on Consent</b>
Potrero Generating Facility	)	<b>42 U.S.C. § 7413(a), (d)</b>
_____	)	

**I. Findings of Fact:**

WHEREAS, the Bay Area Air Quality Management District (“BAAQMD”) has issued to Mirant Potrero LLC, formerly known as Southern Energy Potrero LLC (hereinafter “Mirant”), a BAAQMD Major Facility Permit for Plant No. 26 (“the Permit”) for Mirant’s Potrero Power Plant in San Francisco, California, which contains, among other things, conditions regulating the operation of six combustion turbines (Permitted Source Nos. 10, 11, 12, 13, 14 and 15) which power three electric generating units (Potrero Units 4, 5 and 6) (hereinafter collectively the “Potrero Peaking Turbines”). Each of Potrero Units 4, 5, and 6 has a nameplate capacity of 52 megawatts.

WHEREAS, Condition 15816 of the Permit restricts Mirant to operating each of the Potrero Peaking Turbines for 877 hours or less per calendar year for limiting emissions of nitrogen oxides (“NOX”) to levels allowable under BAAQMD Regulation 9, Rule 9, Section 302 (65 parts per million (volume) (“ppmv”) when using non-gaseous fuel), without requiring Mirant to install additional air pollution controls.

WHEREAS, the United States Environmental Protection Agency, Region 9 (“EPA”) has approved BAAQMD Regulation 9, Rule 9 for inclusion in the California State Implementation Plan for the Bay Area Air Quality Management District (“SIP”).

WHEREAS, Mirant operates the Potrero Peaking Turbines pursuant to the terms of applicable California Independent System Operator (“ISO”) tariffs, a Reliability Must Run Agreement (“RMR Agreement”) with the ISO, and a Participating Generator

Agreement with the ISO, all of which are on file with the Federal Energy Regulatory Commission.

WHEREAS, Mirant supplies electrical energy from the Potrero Peaking Turbines to the California Department of Water Resources (“DWR”) and other entities serving electrical load within California pursuant to contracts with such entities;

WHEREAS, pursuant to the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, (the “Act”) and the regulations promulgated thereunder, and the SIP, a facility may not operate in violation of its Permit limits;

WHEREAS, on January 17, 2001, Governor Davis of the State of California proclaimed an State of Emergency due to the shortage of electricity in California and on February 8, 2001 issued Executive Order D-24-01, as supplemented by Executive Order D-28-01 on March 7, 2001 (the “Executive Orders”);

WHEREAS, the Executive Orders direct the BAAQMD and other California air pollution control and air quality management districts to “modify emissions limits that limit the hours of operation in air quality permits as necessary to ensure that power generation facilities that provide power under contract to the Department of Water Resources are not restricted in their ability to operate,” and further specify that “the authority to modify permits, . . . shall also include the authority to modify other applicable conditions” as necessary to ensure reliability of the grid and delivery of power in California.

WHEREAS, the ISO and BAAQMD have indicated that the Potrero Peaking Turbines are crucial electric generation units within the San Francisco generation and transmission system, which have historically been operated only during periods of peak electrical energy demand and in emergency circumstances to avoid load shedding and to

provide generation and transmission support to the San Francisco transmission network for substantially fewer hours per year than the 877 hours allowed in the Permit;

WHEREAS, the ISO has informed Mirant and BAAQMD that the Potrero Peaking Turbines will be dispatched by the ISO and directed pursuant to the Executive Orders to operate for additional hours during 2001, which will result in one or more of the Potrero Peaking Turbines exceeding the Permit limit of 877 operating hours per calendar year during 2001;

WHEREAS, an immediate circumstance that may require Mirant to operate the Potrero Peaking Turbines in excess of the Permit limit of 877 hours per year during 2001, is that the ISO has approved a scheduled outage for Potrero Unit 3 beginning on or about March 23, 2001, to allow Mirant to perform necessary maintenance work on that unit, and that outage is expected to overlap with a current scheduled maintenance outage at the Hunters Point Power Plant so that electric generation by the Potrero Peaking Units is expected to be necessary to serve demand and assure the reliability of the electric distribution in the San Francisco area, and that the ISO during 2001 to date has been ordering Mirant to operate the Potrero Peaking Turbines to generate electricity beyond their historic peaking generation usage levels;

WHEREAS, the BAAQMD has determined that the additional NOX emissions that may be emitted by the Potrero Peaking Turbines under this Order are unlikely to cause any air pollution standards to be exceeded or cause any significant impact on public health because the BAAQMD anticipates providing offsetting NOX emission reductions for all excess NOX emissions during the term of this Order, by using the mitigation fees paid by Mirant to reduce NOX emissions.

WHEREAS, the BAAQMD and Mirant have entered into a Compliance and Mitigation Agreement dated as of March 30, 2001 (“BAAQMD Agreement”),

authorizing operation of the Potrero Peaking Turbines beyond 877 hours per calendar year and requiring the payment of mitigation fees in the amount of \$20,000 per ton of excess NOX emissions;

WHEREAS, EPA and Mirant (collectively designated as the “Parties”) agree that in order to alleviate the current energy generation shortage and to avoid potential blackouts in California, this Order is in the public interest; and

WHEREAS, Mirant has indicated that its purpose in entering into this Order is to establish a mechanism allowing Mirant to comply with directives by the ISO, DWR, and other entities serving electrical load in California to provide electricity which will require operation of the Potrero Peaking Turbines in excess of the 877 hour per calendar year Permit limit during 2001.

NOW, THEREFORE, the Parties agree that:

## **II. Definitions**

Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Act, and the regulations promulgated thereunder, and in the SIP. In addition, the following definitions shall apply to the terms contained within this Order:

1. “LAER/CA-BACT” shall mean the Lowest Achievable Emission Rate, as defined by Section 173 of the Act, and regulations located at 40 C.F.R. § 51.165(a)(1)(xiii), and the SIP Rule 2-2-201;
2. “Day” or “day” shall mean a calendar day;
3. “Effective Date” shall mean the last date this Order was signed by the Parties;
4. “Effective Period” shall mean the period starting the Effective Date and ending the Termination Date;
5. “Order” shall mean this Administrative Order on Consent.

### **III. Conclusions of Law:**

#### **1. Authority to Issue Order**

EPA has the authority to enter into the Order pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Section 113(a) grants the Administrator of EPA the authority to make findings of violation and to issue orders requiring persons in violation of the Act to come into compliance. This authority has been delegated to the Regional Administrator, EPA, Region 9 and redelegated to the Director, Air Division, EPA, Region 9.

By entering into this Order, the Parties agree that EPA is providing adequate notice of EPA's allegation that Mirant will be in violation of Condition 15816 of the Permit and of section 302 of BAAQMD Regulation 9, Rule 9 as included in the SIP, upon exceeding the Permit limit of 877 operating hours per calendar year at the Potrero Peaking Turbines. Mirant has not admitted that it is in violation of any permit limit or other requirement of the Act.

#### **2. Applicability and Binding Effect**

This Order shall apply to and be binding upon EPA and Mirant, their successors and assigns, and their officers, directors, employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in Fed. R. Civ. P. 65(d).

During the Effective Period of this Order, Mirant shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of ownership of any portion of the Potrero Peaking Turbines, any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Potrero Peaking Turbines. Mirant shall condition any transfer, in whole or in part, of ownership, operation, or other interest of the Potrero Peaking Turbines upon the transferee's agreement to continue the successful execution of the terms and conditions of this Order.

Simultaneously with such notice, Mirant shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Mirant shall not be released from the obligations or liabilities of this Order unless EPA has approved the release of said obligations or liabilities.

#### **IV. Order To Comply:**

Pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a), the Director of the Air Division, Region 9, hereby issues this Order requiring Mirant to comply with the following terms and conditions while this Order is in effect:

1. that only distillate oil be burned to operate the Potrero Peaking Turbines;
2. that the Potrero Peaking Turbines not emit air pollutants in amounts higher than 65 ppmv NOX at 15% O<sub>2</sub>, except during periods of startup and shutdown, as specified in BAAQMD Regulation 9, Rule 9, section 114;
3. that Mirant provide to EPA a copy of NOX excess emissions reports submitted to BAAQMD as required by paragraph 3.5 of the Compliance and Mitigation Agreement with the BAAQMD attached hereto; and
4. that the Potrero Peaking Turbines comply with any and all elements of the Permit other than Condition 15816 restricting each turbine to operating no more than 877 hours per calendar year, and with the BAAQMD Agreement.
5. Mirant shall return to compliance with Condition 15816 of the Permit limiting operation of the Potrero Peaking Turbines to 877 hours per calendar year, and any other applicable requirements, on and after January 1, 2002, but in no event later than the Termination Date of this Order, *unless*

(a) by January 15, 2002, Mirant has provided written notice to EPA and BAAQMD that Mirant intends to operate the Potrero Peaking Turbines, beyond the Termination Date of this Order, with annual operating hours above the 877 hours per

calendar year limit currently in Condition 15816 of the Permit;

(b) by February 15, 2002, Mirant has requested from BAAQMD all permit revisions (or new permit issuance) necessary for the Potrero Peaking Turbines to operate for more than 877 hours per calendar year in full compliance with the Act and the SIP, including but not limited to BAAQMD Regulation 9, Rule 9, Section 301; and

(c) by April 6, 2002, Mirant has installed on the Potrero Peaking Turbines and is operating air pollution controls specified in enforceable permits obtained pursuant to subparagraph 5.(b) as necessary for achieving and maintaining compliance with BAAQMD Regulation 9, Rule 9, Section 301, and, if applicable, for achieving LAER/CA-BACT, and has obtained any necessary offsets.

6. As a further basis for issuing this Order, EPA is relying on the provision of the Compliance and Mitigation Agreement between Mirant and BAAQMD requiring Mirant to pay to BAAQMD during the term of the Agreement a mitigation fee of \$20,000 for each ton of NOX emitted during operation in excess of the Permit limit of 877 operating hours per year for calendar 2001. Emission calculations shall be based on records of distillate oil used. The mitigation fee will be used by BAAQMD to fund projects to reduce NOX emissions in the San Francisco Bay area to mitigate or offset excess emissions from the Potrero Peaking Turbines.

## **V. General Provisions**

1. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by the Parties.

2. Each undersigned representative of EPA and Mirant certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute and bind legally the Parties to this document.

3. Unless this Order states otherwise, whenever, under the terms of this Order,

written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

4. The following addresses shall be used for notices and submissions required by this Order:

As to EPA:

Director, Air Division  
United States Environmental Protection Agency  
75 Hawthorne Street (AIR-1)  
San Francisco, California 94105

As to Mirant:

Mr. Ron Kino  
Environmental Health & Safety Manager  
Mirant California  
1350 Treat Boulevard, Suite 500  
Walnut Creek, CA 94596

**VI. Copies of Compliance Order:**

This Order has been issued to Anne M. Cleary, President, Mirant Potrero LLC. Copies of this Order have also been sent to David Farabee, Counsel for Mirant, Robert Kwong, District Counsel for the Bay Area Air Quality Management District, and Kathleen Walsh, General Counsel for California Air Resources Board.

**VII. Effect of Compliance Order:**

The entry of this Order shall not constitute an admission by Mirant of any violation alleged herein nor of any statute or rule, and shall not be construed for any purpose as an admission of law or fact. Mirant has not admitted that it is in violation of any permit limit or other requirement of the Act.



EPA reserves all rights to respond to any Title V permit petitions submitted to EPA regarding the Potrero Peaking Turbines. EPA also reserves all rights to review, comment and object to any draft or proposed permit modifications regarding the Potrero Peaking Turbines.

Execution by Mirant of this Order and the Compliance and Mitigation Agreement with BAAQMD shall, with respect to Condition 15816 and Section 302 of BAAQMD Regulation 9, Rule 9, be deemed to satisfy any and all requirements under Title V and the Act for prompt reporting of deviations from permit conditions.

#### **VIII. Effective Date and Termination of this Order:**

This Termination Date of this Order shall be: (a) EPA's receipt of notice of Mirant's full compliance with the Permit, including but not limited to Condition 15816 and the BAAQMD Agreement; (b) Mirant's obtaining new or revised permit providing for achieving and maintaining compliance with BAAQMD Regulation 9, Rule 9, Section 301, and, if applicable, for achieving installation of LAER/CA-BACT, as provided in Paragraph III.6; (c) April 6, 2002; or (d) the expiration of the State of Emergency proclaimed by Governor Davis, whichever is earlier.

Notwithstanding the paragraph above, this Order shall terminate, after notice by EPA, if any of the following occurs: (1) the Potrero Peaking Turbines emit air pollution in amounts (or at rates) higher than those in Paragraph IV.2, (2) Mirant fails to pay the money to the BAAQMD required by its Compliance and Mitigation Agreement attached hereto, or (3) in the event an imminent substantial endangerment to the public health, welfare or the environment occurs. This Order shall terminate immediately upon receipt by Mirant of the notice of termination.

#### **IX. Enforcement:**

Any violation of this Order may result in a civil judicial action for an injunction

and civil penalties up to \$27,500 per day per violation, 42 U.S.C. § 7413(b)(2). EPA may also file an action seeking criminal sanctions pursuant to Section 113(c) of the Act. 42 U.S.C. § 7413(c).

**X. Opportunity for Conference and Effective Date:**

Section 113(a)(4) provides that this Order shall not take effect until Mirant has had an opportunity to confer with EPA regarding the alleged violations. Mirant's signature in the space provided below shall constitute its acknowledgment that it has had sufficient opportunity to confer with EPA prior to issuance of the Compliance Order. Your signature also constitutes your agreement to comply with Paragraphs IV.1-6 above (Order to Comply), and the date of your signature shall constitute the effective date of this Order.

The undersigned representatives of EPA and Mirant each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the respective Parties to this Order.

Date: U.S. ENVIRONMENTAL PROTECTION AGENCY

April 6, 2001

\_\_\_\_\_/s/\_\_\_\_\_  
Amy Zimpfer  
Acting Director, Air Division, Region 9

Acknowledged and Agreed:

MIRANT POTRERO LLC

By: \_\_\_\_\_/s/\_\_\_\_\_

Its: \_\_\_\_\_

Date: April 6, 2001